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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
10

11 **Brian Whitaker**

12 Plaintiff,

13 v.

14 **Claire's Boutiques, Inc.**, a  
15 Michigan Corporation

16 Defendant.

17 **Case No.**

18 **Complaint For Damages And  
19 Injunctive Relief For Violations  
20 Of:** Americans With Disabilities  
21 Act; Unruh Civil Rights Act

22 Plaintiff Brian Whitaker complains of Claire's Boutiques, Inc., a  
23 Michigan Corporation; and alleges as follows:

24  
25 **PARTIES:**

26 1. Plaintiff is a California resident with physical disabilities. He is  
27 substantially limited in his ability to walk. He suffers from a C-4 spinal cord  
28 injury. He is a quadriplegic. He uses a wheelchair for mobility.

1. Defendant Claire's Boutiques, Inc. owned Icing located at or about  
1151 Galleria Blvd, Roseville, California, in March 2021.

2. Defendant Claire's Boutiques, Inc. owns Icing ("Store") located at or  
about 1151 Galleria Blvd, Roseville, California, currently.

1       4. Plaintiff does not know the true names of Defendants, their business  
2 capacities, their ownership connection to the property and business, or their  
3 relative responsibilities in causing the access violations herein complained of,  
4 and alleges a joint venture and common enterprise by all such Defendants.  
5 Plaintiff is informed and believes that each of the Defendants herein is  
6 responsible in some capacity for the events herein alleged, or is a necessary  
7 party for obtaining appropriate relief. Plaintiff will seek leave to amend when  
8 the true names, capacities, connections, and responsibilities of the Defendants  
9 are ascertained.

10

11       **JURISDICTION & VENUE:**

12       5. The Court has subject matter jurisdiction over the action pursuant to 28  
13 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with  
14 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

15       6. Pursuant to supplemental jurisdiction, an attendant and related cause  
16 of action, arising from the same nucleus of operative facts and arising out of  
17 the same transactions, is also brought under California's Unruh Civil Rights  
18 Act, which act expressly incorporates the Americans with Disabilities Act.

19       7. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is  
20 founded on the fact that the real property which is the subject of this action is  
21 located in this district and that Plaintiff's cause of action arose in this district.

22

23       **FACTUAL ALLEGATIONS:**

24       8. Plaintiff went to the Store in March 2021 with the intention to avail  
25 himself of its goods and to assess the business for compliance with the  
26 disability access laws. Not only did Plaintiff personally encounter the unlawful  
27 barriers in March 2021, but he wanted to return and patronize the business  
28 subsequent to his original visit but was specifically deterred due to his actual

1 personal knowledge of the barriers gleaned from his encounter with them.

2       9. The Store is a facility open to the public, a place of public  
3 accommodation, and a business establishment.

4       10. Unfortunately, on the date of the plaintiff's visit, the defendants failed  
5 to provide wheelchair accessible sales counters in conformance with the ADA  
6 Standards as it relates to wheelchair users like the plaintiff.

7       11. The Store provides sales counters to its customers but fails to provide  
8 any wheelchair accessible sales counters.

9       12. A problem that plaintiff encountered is that the sales counter was too  
10 high. There was no counter that was 36 inches or less in height that plaintiff  
11 could use for his transactions.

12       13. Plaintiff believes that there are other features of the sales counters that  
13 likely fail to comply with the ADA Standards and seeks to have fully compliant  
14 sales counters for wheelchair users.

15       14. On information and belief, the defendants currently fail to provide  
16 wheelchair accessible sales counters.

17       15. Additionally, on the date of the plaintiff's visit, the defendants failed to  
18 provide wheelchair accessible paths of travel in conformance with the ADA  
19 Standards as it relates to wheelchair users like the plaintiff.

20       16. The Store provides paths of travel to its customers but fails to provide  
21 any wheelchair accessible paths of travel.

22       17. One problem that plaintiff encountered is that some of the paths of  
23 travel inside the Store were less than 36 inches in width.

24       18. Plaintiff believes that there are other features of the paths of travel that  
25 likely fail to comply with the ADA Standards and seeks to have fully compliant  
26 paths of travel for wheelchair users.

27       19. On information and belief, the defendants currently fail to provide  
28 wheelchair accessible paths of travel.

1       20. These barriers relate to and impact the plaintiff's disability. Plaintiff  
2 personally encountered these barriers.

3       21. As a wheelchair user, the plaintiff benefits from and is entitled to use  
4 wheelchair accessible facilities. By failing to provide accessible facilities, the  
5 defendants denied the plaintiff full and equal access.

6       22. The failure to provide accessible facilities created difficulty and  
7 discomfort for the Plaintiff.

8       23. The defendants have failed to maintain in working and useable  
9 conditions those features required to provide ready access to persons with  
10 disabilities.

11       24. The barriers identified above are easily removed without much  
12 difficulty or expense. They are the types of barriers identified by the  
13 Department of Justice as presumably readily achievable to remove and, in fact,  
14 these barriers are readily achievable to remove. Moreover, there are numerous  
15 alternative accommodations that could be made to provide a greater level of  
16 access if complete removal were not achievable.

17       25. Plaintiff will return to the Store to avail himself of its goods and to  
18 determine compliance with the disability access laws once it is represented to  
19 him that the Store and its facilities are accessible. Plaintiff is currently deterred  
20 from doing so because of his knowledge of the existing barriers and his  
21 uncertainty about the existence of yet other barriers on the site. If the barriers  
22 are not removed, the plaintiff will face unlawful and discriminatory barriers  
23 again.

24       26. Given the obvious and blatant nature of the barriers and violations  
25 alleged herein, the plaintiff alleges, on information and belief, that there are  
26 other violations and barriers on the site that relate to his disability. Plaintiff will  
27 amend the complaint, to provide proper notice regarding the scope of this  
28 lawsuit, once he conducts a site inspection. However, please be on notice that

1 the plaintiff seeks to have all barriers related to his disability remedied. See  
2 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff  
3 encounters one barrier at a site, he can sue to have all barriers that relate to his  
4 disability removed regardless of whether he personally encountered them).

5

6 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS  
7 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all  
8 Defendants.) (42 U.S.C. section 12101, et seq.)

9 27. Plaintiff re-pleads and incorporates by reference, as if fully set forth  
10 again herein, the allegations contained in all prior paragraphs of this  
11 complaint.

12 28. Under the ADA, it is an act of discrimination to fail to ensure that the  
13 privileges, advantages, accommodations, facilities, goods and services of any  
14 place of public accommodation is offered on a full and equal basis by anyone  
15 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.  
16 § 12182(a). Discrimination is defined, *inter alia*, as follows:

- 17 a. A failure to make reasonable modifications in policies, practices,  
18 or procedures, when such modifications are necessary to afford  
19 goods, services, facilities, privileges, advantages, or  
20 accommodations to individuals with disabilities, unless the  
21 accommodation would work a fundamental alteration of those  
22 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 23 b. A failure to remove architectural barriers where such removal is  
24 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
25 defined by reference to the ADA Standards.
- 26 c. A failure to make alterations in such a manner that, to the  
27 maximum extent feasible, the altered portions of the facility are  
28 readily accessible to and usable by individuals with disabilities,

including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities. 42 U.S.C. § 12183(a)(2).

29. When a business provides facilities such as sales or transaction counters, it must provide accessible sales or transaction counters.

30. Here, accessible sales or transaction counters have not been provided in conformance with the ADA Standards.

31. When a business provides paths of travel, it must provide accessible paths of travel.

32. Here, accessible paths of travel have not been provided in conformance with the ADA Standards.

33. The Safe Harbor provisions of the 2010 Standards are not applicable here because the conditions challenged in this lawsuit do not comply with the 1991 Standards.

34. A public accommodation must maintain in operable working condition those features of its facilities and equipment that are required to be readily accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

35. Here, the failure to ensure that the accessible facilities were available and ready to be used by the plaintiff is a violation of the law.

**II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ. Code § 51-53.)

36. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, *inter alia*,

1 that persons with disabilities are entitled to full and equal accommodations,  
2 advantages, facilities, privileges, or services in all business establishment of  
3 every kind whatsoever within the jurisdiction of the State of California. Cal.  
4 Civ. Code § 51(b).

5 37. The Unruh Act provides that a violation of the ADA is a violation of the  
6 Unruh Act. Cal. Civ. Code, § 51(f).

7 38. Defendants' acts and omissions, as herein alleged, have violated the  
8 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff's  
9 rights to full and equal use of the accommodations, advantages, facilities,  
10 privileges, or services offered.

11 39. Because the violation of the Unruh Civil Rights Act resulted in difficulty,  
12 discomfort or embarrassment for the plaintiff, the defendants are also each  
13 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-  
14 (c).)

15

16 **PRAYER:**

17 Wherefore, Plaintiff prays that this Court award damages and provide  
18 relief as follows:

19 1. For injunctive relief, compelling Defendants to comply with the  
20 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the  
21 plaintiff is not invoking section 55 of the California Civil Code and is not  
22 seeking injunctive relief under the Disabled Persons Act at all.

23 2. For equitable nominal damages for violation of the ADA. See  
24 *Uzuegbunam v. Preczewski*, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021)  
25 and any other equitable relief the Court sees fit to grant.

26 3. Damages under the Unruh Civil Rights Act, which provides for actual  
27 damages and a statutory minimum of \$4,000 for each offense.

1           4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant  
2 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.  
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Dated: March 17, 2021

CENTER FOR DISABILITY ACCESS

By: 

Amanda Seabock, Esq.  
Attorney for plaintiff

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